

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
TETHER AND BITFINEX CRYPTO : Docket #19cv9236  
ASSET LITIGATION : 1:19-cv-09236-KPF  
: New York, New York  
February 8, 2022  
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: VIDEOCONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE

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E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

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2 THE CLERK: Your Honor, this is in the matter  
3 In re Tether and Bitfinex Crypto Asset Litigation.

4 HONORABLE KATHERINE POLK FAILLA (THE COURT):  
5 Thank you all very much, I've had my deputy check in  
6 with all of you to see which attorneys are appearing.  
7 For those of you appearing either by video or by phone  
8 I welcome your participation, I thank you. I understand  
9 today's agenda to concern two issues and hopefully the  
10 parties agree with me. The first concerns a request  
11 from plaintiff's counsel for an extension of the  
12 discovery deadlines in this case, the second concerns a  
13 clarification regarding certain protocols involving  
14 what we've called the anonymous trader's information.

15 I'm going to begin, please, with the request  
16 for extension and in furtherance of that, I have  
17 reviewed the parties' submissions, the plaintiff's  
18 letter of the 23<sup>rd</sup> of January, and then the responses of  
19 the 26<sup>th</sup> of January from the BT defendants, from Bittrex  
20 and from Poloniex. So why I'm telling you that is not  
21 just to confirm for you that I've read this stuff but  
22 to ask you please not simply to restate what is in your  
23 written submissions. My thought is what may have  
24 happened is that your own positions may have been  
25 modified as a result of what you've seen from your

1  
2 colleagues or that there may have been discussions  
3 preliminary to this conference where these issues were  
4 addressed. So I guess what I'd like is just what you  
5 want to be sure I know that I couldn't get just from  
6 reading the letters.

7 Ms. Halligan, may I please begin with you.

8 MS. CAITLIN HALLIGAN: Thank you, Your Honor,  
9 and I know that we're going to address this issue first  
10 so I just want to request Your Honor's permission  
11 pursuant to Rule 3(d) that Laura King who is an  
12 associate at the firm be permitted to address the  
13 issues related to the anonymous trader.

14 THE COURT: Of course, thank you.

15 MS. HALLIGAN: Thank you, Your Honor. So, Your  
16 Honor, we just want to make three points if we can. The  
17 defendants, themselves, as you know from reading our  
18 letters to you added two months to the schedule  
19 pursuant to a request from the BT defendants, and the  
20 defendants have agreed --

21 THE COURT: Please pause -- please pause right  
22 there, I don't want, I want to be very careful about  
23 what arguments are being made. I didn't understand them  
24 to have added two months to the discovery schedule.  
25 They, with your consent, asked for and received a two

1  
2 month extension of an interim deadline, so it's not as  
3 though there was an addition of two months to the  
4 schedule, and I did not understand, although you'll  
5 tell me if I'm misremembering something, that at that  
6 time in August there was some suggestion that later on  
7 there would be a request for additional discovery. No  
8 one at the time, Ms. Halligan, suggested an extension  
9 of the general fact discovery deadline, is that  
10 correct?

11 MS. HALLIGAN: That is correct, Your Honor, I  
12 did not mean to be imprecise about that. But my point  
13 is that my understanding is that the defendants at this  
14 juncture did not oppose an extension to the general  
15 schedule of two months. We requested four months and  
16 they said they would agree to two months, so that was  
17 the point I was --

18 THE COURT: Okay, I'm not sure I understood  
19 that, I guess I'll have to look back at my notes, but I  
20 understood that the BT defendants didn't object to a  
21 two month extension so long as there were no further  
22 discovery requests, but I did not appreciate the  
23 Poloniex or Bittrex had consented to a two month  
24 extension. Did I, have there been subsequent  
25 discussions or did I perhaps misread those two

1  
2 submissions?

3 MS. HALLIGAN: My understanding, Your Honor,  
4 is that they did, but obviously they can address that  
5 themselves.

6 THE COURT: I'll talk to them at some point.  
7 Go ahead. Go ahead.

8 MS. HALLIGAN: So, Your Honor, we are mindful  
9 of your caution that any request for an extension has  
10 to be accompanied by a detailed factual justification.  
11 We believe we have that as laid out in the papers and  
12 there are three reasons why we think it's essential.  
13 First of all, as we lay out, there have been serious  
14 deficiencies in defendants' productions, many of which  
15 were not apparent to us until after the extended  
16 substantial completion deadline at the end of October  
17 and as recently as January, last month, with regard to  
18 productions from the exchange defendants. And I'm  
19 happy to outline what those deficiencies are, but they  
20 go to the core of our case.

21 With respect to the BT defendants, the bank  
22 records are very woefully incomplete and we need --

23 THE COURT: But those materials were produced  
24 to you in April I am told, and you could have told them  
25 -- you could have told them back in April that they

1  
2 were deficient, is that, did they misstate that in  
3 their letter to me?

4 MS. HALLIGAN: Your Honor, my, my  
5 understanding is that half of the documents produced by  
6 BT were produced as of the date of final completion  
7 which is the end of October. Those records are  
8 incredibly complex. We offered them to try to sort out  
9 a way to identify the bank accounts that held reserves  
10 in an expeditions way and they declined. So we received  
11 hundreds of thousands of pages, those records, some are  
12 in Chinese, many of the bank records do not have full  
13 data for every day in the month, there are 112 bank  
14 accounts, and so we have been sorting through those at  
15 as quick a pace as we can from the end of October until  
16 now and all we are trying to do is to ensure that we  
17 have full information regarding their reserves. So we  
18 could not have done that sooner than we are coming to  
19 the Court now.

20 With respect to the exchange defendants, Your  
21 Honor, those communications that have given rise to  
22 both additional requests and to our requests for an  
23 extension came to light when they produced them in  
24 January last month. What both of the Exchange  
25 defendants, and the facts are a little bit different



1  
2 with respect to each and I'm happy to go into more  
3 detail if Your Honor would like, what is at issue with  
4 each of those defendants is the scope of messaging  
5 platforms across which they have searched for  
6 communications that could go to the core of our  
7 allegations about an agreement to prop up the prices of  
8 Tether and other crypto commodities. And frankly they  
9 played hide the ball. We are pressing very hard both  
10 to remedy the deficiencies and with respect to Poloniex  
11 where they have now made clear there are custody and  
12 control issues, to test those and to pursue every other  
13 avenue we can to get the relevant materials --

14 THE COURT: Please pause -- please pause, Ms.  
15 Halligan, I'm behind you a bit because I paused with  
16 the words hide the ball. So tell me, please, how  
17 defendants are hiding the ball from you?

18 MS. HALLIGAN: So, Your Honor, they've  
19 produced -- let me, let me speak differently, if I can,  
20 specifically about Polonies and Bittrex if that's okay,  
21 Your Honor?

22 THE COURT: Of course.

23 MR. HAZELWOOD: So -- so we had requested early  
24 on in the litigations materials, communications with  
25 other defendants, the anonymous trader and other

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Exchanges and Poloniex told us as they now informed the Court that their employees used a range of messaging platforms during the relevant time period and they also told us that the company had been sold twice and that they would produce documents in their custody and control.

They claim that that told us in meet and confers that they were only searching email and Slack and suggest that we were late in coming to them to press than for other platforms. We have searched our own notes of those meet and confers, our correspondence, and we have conferred with prior counsel, and our understanding is that Poloniex did tell us that the first sale in 2018 meant that there were limited documents transferred. They made no representations about communications from the period following the sale through the end of the class period. In fact, in 2022, they did not give us a firm answer about custody and control and offered to explore a compromise.

Last month in January of '23, they finally produced messages from a platform called Slack and when we reviewed them we learned that their employees had, in fact, been extensively using these other

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2 communications platforms and they also made clear their  
3 position, for the first time made clear that they  
4 lacked custody and control over communications on those  
5 other platforms.

6           So that was a month ago. We are trying to test  
7 their assertion about custody and control and we are  
8 exploring and have already taken steps to reach out to  
9 former employees with subpoenas in order to see if we  
10 can secure documents from them as well as what we  
11 believe to be the successor entities. So that happened  
12 last month and we are pursuing it aggressively.

13           With respect to Bittrex, we had asked for  
14 communications across messaging platforms, but Bittrex  
15 said that they had not authorized their employees to us  
16 other platforms other than email, Slack and two others,  
17 but they never told us that they were not searching  
18 those platforms. What we discovered when we went  
19 through another defendant's production were documents  
20 indicating that their employees, including the CEO, in  
21 fact did use other platforms. So we are pressing them  
22 to complete that search and to provide us those  
23 documents.

24           THE COURT: Ms. Halligan, please pause. Thank  
25 you. Returning to Bittrex. Bittrex said to you at the

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outset they did not authorize their employees to use other platforms, you say they did not tell you that they were going to not search those other platforms. Was there a follow up question by someone on plaintiff's counsel's team to make -- to clarify that issue? That seems, if someone had said to me we don't authorize our employees to use them, my follow-up question would have been do they use them anyway and, if so, who is going to look for them. I guess I'm trying to figure out whether you were actually left with a misimpression or simply did not ask follow-up questions?

MS. HALLIGAN: Well, Your Honor, when we received documents from another production which made clear that that representation was inaccurate, that is what lead us to press them. I mean we got a document which made clear that their CEO was using another platform. And so that was what led us to need to test this. And they told us that they had not used other platforms that turned out not to be accurate. And so that's why we are probing this now as opposed to when that assertion was initially made.

If I can make two other points, Your Honor --

THE COURT: Of course.

MS. HALLIGAN: I want to be mindful of the Court's time, as we lay out in our letter, we are exploring new evidence that has come to light in the defendant's productions that there may be a wider range of entities that were involved in the manipulation scheme, particularly market makers and other exchanges, and the defendants say that's not fair because it's far afield from our claims. But that is just flat wrong, those kinds of communications would go squarely to our claims of market manipulation.

And finally, Your Honor, we are not asking you, to be clear, to revisit your ruling on the anonymous trader, but I would like to tell the Court those protocols have imposed an extraordinary time consuming burden. And if I could just explain that, I'm not a tech person but i will do my best.

So for every file with trader related information, and these, this information often appears multiple times within a document and across production volume, so just one production by Bittrex at the end of December had 72 documents and we had to do more than 1,700 redactions. With each of those, we have to go through a process of redacting, exporting and overwriting the file in native and text, reviewing it,

1  
2 queue seeing it and reconverting it. And so given that  
3 this is sprinkled amongst all of the documents, it is  
4 frankly taking longer than we had expected and that is  
5 why we moved the Court for relief. And we understand  
6 the Court's ruling on that but it is something that has  
7 introduced, you know, a greater burden in terms of time  
8 than we had anticipated.

9 THE COURT: Yes, but you're not suggesting it  
10 requires four additional months to conclude, are you?

11 MS. HALLIGAN: Your Honor, I'm saying with  
12 along with our need to follow up on these deficiencies,  
13 we are really pushing this case as hard as we can.  
14 And, you know, perhaps if we have, you know, perhaps if  
15 we would do something differently going forward I think  
16 it would be to come to the Court more quickly, we would  
17 be happy to schedule a routine status conference with  
18 Your Honor to --

19 THE COURT: And I have no, please be clear, I  
20 have no interest in your routine status conference.

21 MS. HALLIGAN: Understood.

22 THE COURT: I have responded promptly to --

23 MS. HALLIGAN: Yes, you have.

24 THE COURT: (continuing) -- to every discovery  
25 dispute that you have given me. So please don't be

1 15

2 suggesting that somehow I am to blame. No, no, no, no,  
3 because --

4 MS. HALLIGAN: I did not, no, Your Honor --

5 THE COURT: Please stop speaking. You're  
6 suggesting that going forward things will be different.  
7 I don't know, things should have been different all  
8 along. It does not give me any comfort to hear that now  
9 you have new ideas as to how to do this. You have  
10 given me your reasons, I will take very seriously your  
11 reasons, but suggesting that somehow I should get  
12 involved more actively to ensure that you abide by your  
13 commitments to the Court, I'm not interested in doing  
14 that. I'm here to help you all. I'm here to help you  
15 where there are disputes. I'm not interested in  
16 babysitting. But let me not, let me stop there, tell me  
17 what else you want me to know about the extension  
18 issue.

19 MS. HALLIGAN: Yes. Your Honor, I did not mean  
20 to suggest that, all I meant to suggest is that we  
21 should push to impasse more quickly ourselves. I  
22 certainly did not mean to suggest that we want or would  
23 request babysitting. I apologize.

24 THE COURT: I do not, the point is, Ms.  
25 Halligan, I don't understand why now you're telling me

1  
2 that you should have done this earlier. I'm not sure,  
3 because it's not as though, however imposing I may seem  
4 today, it's not as though I was ever not available for  
5 you. So I don't under -- I do think, and I think in a  
6 quiet moment you might even agree, that there were  
7 issues that you should have brought to my attention  
8 much more quickly than January 23<sup>rd</sup>. I just don't  
9 understand why you didn't do it.

10 MS. HALLIGAN: Your Honor, you certainly have  
11 been exceedingly responsive --

12 THE COURT: Okay, let's not go that far --

13 MS. HALLIGAN: I think as quick as any judge  
14 we've seen. Okay. But, Your Honor, two points, one is  
15 we truly have been trying to work through these issues  
16 with multiple defendants in earnest so that we have not  
17 had to come to the Court. And when we have really  
18 reached impasse after what are, you know, sometimes  
19 long negotiations, we have come promptly. And my point  
20 was simply that I think that we should perhaps take a  
21 harder line and we will do that, I was not intending to  
22 suggest anything else.

23 Why we came to you in the middle of January is  
24 that the process of going through, first of all, the  
25 bank records that we got at the end of October, given



1  
2 their complexity, the fact that a number of them were  
3 in Chinese, these are paper records, paper records that  
4 we had to image and then review, it simply took us a  
5 lot of time to figure out what the BT defendants could  
6 have told us on the front end. Which is what's the  
7 array of accounts where they claim to have reserves,  
8 and what are the records attendant to those accounts,  
9 and where are there deficiencies that show whether or  
10 not there are, you know, X dollars in Y accounts on a  
11 certain day. So that brought us to the end of the  
12 calendar year and then we spent some time in early  
13 December negotiating the parameters of an extension  
14 request.

15           With respect to the Exchange defendants, Your  
16 Honor, those productions that were made to us in early  
17 to mid-January just a couple of weeks ago are what led  
18 us to understand both that there were communications on  
19 other platforms and that there was a position with  
20 respect to custody and control that was now made clear  
21 to us. So that is why we did not come to Your Honor  
22 sooner, but we have not been anything other than  
23 diligent, we have every interest in moving this case  
24 forward as quickly as possible.

25           THE COURT: Thank you.

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MS. HALLIGAN: Thank you, Your Honor.

THE COURT: The next set of notes that I have are from the BT defendants, so is that Mr. Greenfield?

MR. ELLIOT GREENFIELD: Yes, good morning, Your Honor.

THE COURT: And, again, take no offense to those of you who are, I guess it would be Ms. Rudzin and Mr. Weiler, it's just how I organized my notes, Mr. Greenfield, please respond.

MR. GREENFIELD: Sure. So, you know, I don't want to repeat what's in the letter, I heard what you said. I will say that, in general, we, as a matter of professional courtesy, do agree to extensions if they're reasonable requests, and in this case we, they asked for a four-month, we said, you know, and I believe this was on behalf of all defendants, we said -

THE COURT: Oh, excuse me, okay, then I take that back, I guess when I read the, the Exchange defendants, I just saw, I saw from one of them does not believe that any extension is warranted and the other, the Bittrex defendants noted that I had already granted an extended discovery schedule, so I misperceived that. So I take that back, thank you.

1  
2 MR. GREENFIELD: It is all of our defendants'  
3 position that no extension is necessary here. But we  
4 did as a group, as a defense group say we would be okay  
5 with a two-month extension, as you noted, conditioned  
6 only on the agreement by plaintiffs not to serve  
7 additional discovery. They rejected that, they wanted  
8 four months, no conditions, not a day less. And, you  
9 know, we think there's enough time in the schedule that  
10 an extension for them to complete depositions by late  
11 May and to file for class certification by late June.

12 Let me just respond to a couple of points that  
13 Ms. Halligan raised, if I can. First, you know, the  
14 need to follow up on any perceived deficiencies is not  
15 something we're objecting to and there is no reason  
16 that they can't continue to do that. That's very  
17 different from serving more requests for more  
18 documents.

19 With respect to the purported deficiencies in  
20 the BT defendants' production of bank records, that is  
21 just, you know, flatly wrong, we've responded to their  
22 letter. They say in their request to the Court, they  
23 say, quote, that BT defendants are missing, quote,  
24 "multiple years' worth of financial records for over  
25 100 accounts at more than 30 banks." That's just

1  
2 flatly wrong. Most of the bank accounts that they  
3 asked about were not bank accounts that held USDT  
4 reserves. There are bank accounts that held USDT  
5 reserves but only for, you know, some number of months  
6 or years and not the entire relevant period, so we  
7 provided bank account statements for those months.

8           There are some of those accounts, as we  
9 explained in our letter to plaintiffs, there are some  
10 accounts that don't produce a monthly bank statement  
11 unless there's activity in the account. That you may  
12 have, you know, the example that was in their letter,  
13 there was a bank statement in June and there was a bank  
14 statement in September and there is nothing in July or  
15 August because there is no activity those months. And  
16 they match up the ending balance in June to the  
17 starting balance in September.

18           We've gone through and responded to their  
19 letter. Their letter actually does not point to any  
20 deficiency --

21           THE COURT: Mr. Greenfield, please pause right  
22 there. Thank you. I am concerned when you refer to  
23 your adversary's argument as flatly wrong. I am  
24 assuming that you've had the, you've relayed the  
25 information that you've just relayed to me now

1  
2 regarding the account statements to plaintiff's  
3 counsel?

4 MR. GREENFIELD: Yes, this is all in --

5 THE COURT: But are you saying to me, sir,  
6 that there are, that your bank records production was  
7 absolutely complete or that some deficiency, but just a  
8 smaller deficiency than initially thought, was  
9 identified by plaintiff's counsel?

10 MR. GREENFIELD: What I'm saying is that I  
11 don't think they identified any deficiency in their  
12 letter. I'm not saying that our production is entirely  
13 completely, we're still, you know, trying to see if we  
14 can track down. There may be some number additional  
15 bank statements. We're trying to, you know, investigate  
16 and make sure that we produced everything that we need  
17 to produce but it's substantially complete and I think  
18 any missing documents would be a very small number.

19 Another related point is that we have produced  
20 a report which plaintiffs are aware of because they  
21 asked about it some months ago, called the BRG report,  
22 which for the bulk of the relevant period at least does  
23 identify every bank statement, every bank account that  
24 held USDT reserves. So they do have that information,  
25 there's a period of time after that the BRG report was

1  
2 issued, there may be some additional bank accounts and  
3 we are in discussions with plaintiffs about their  
4 serving interrogatory, answering an interrogatory that  
5 provides a complete list.

6           So I would say and, you know, turning from,  
7 you know, these, any deficiencies or any follow-ups  
8 that they need to do to their new request for  
9 additional documents, I think those, you know, again, I  
10 don't want to repeat what's in the letter, but it's  
11 hard to think of a more blatant fishing expedition than  
12 to say, you know, we need every document about Sam  
13 Bankman-Fried and Alameda Research, right? And, in  
14 particular, they're pointing to a chat that was  
15 reported in the New York Times or Wall Street Journal  
16 that took place in November, 2022, so just a few months  
17 ago. And that related to an attempt, an alleged attempt  
18 by Mr. Bankman-Fried to destabilize the cryptocurrency  
19 market by trying to impact the price of Tether by  
20 trying to not artificially knock Tether off of its one  
21 dollar pay and kind of cause a ripple effect throughout  
22 the cryptocurrency market. This is when he, you know,  
23 company was on the verge of bankruptcy and, you know,  
24 apparent attempt to kind of take down the whole system  
25 with him.

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THE COURT: Yes, although I believe, I believe the email or the communication that was included with plaintiff's counsel's letter was from 2018, was within the relevant time period. I think you are going to tell me it doesn't mean what they say it means or it certainly doesn't mean, it's certainly not a harbinger of doom, but let me have you tell me why it's not important?

MR. GREENFIELD: Yeah, it also, like the 2022 chat, it also relates to attempts to knock USDT off its peg and to artificially manipulate USDT, not by Bitfinex or Tether but by other players in the crypto world. And Bitfinex' response to Mr. Bankman-Fried that, you know, that was not acceptable and he'd be banned if he, if he followed through. That regardless, the claims here, and plaintiffs want to, you know, broadly construe them anything having to do with manipulation in the cryptocurrency world, that's not what this case is about. This case is about a very specific allegation that the BT defendants printed completely unbacked Tether, and sent that unbacked Tether to accounts at Bittrex and Poloniex and used that completely unbacked Tether to try to, you know, inflate the price of bitcoin. It's a very specific

1  
2 scheme and, you know, that does not open the door in  
3 our view to anything having to do with any allegation  
4 of manipulation anywhere in the cryptocurrency world.

5 THE COURT: Just one moment, please. Thank  
6 you. Mr. Greenfield, I am interested in the claim that  
7 plaintiffs make that the vast majority of the defense  
8 productions in this case took place in October with the  
9 October deadline. Now, of course, better to have it  
10 before the deadline than after the deadline, to be  
11 sure, but I would like to understand from your  
12 perspective the degree to which materials were produced  
13 in August, at times other than October and, more  
14 importantly, the degree to which you have been  
15 producing things since October. Thank you.

16 MR. GREENFIELD: Sure, I'm happy to discuss  
17 that. So what, we produced a large quantity of  
18 documents in August. Those were largely documents that  
19 had previously been produced to various government  
20 regulators, the CFTC, the NYAG, for example, and those  
21 were documents that we were able to review and produce  
22 because we had reached agreement with plaintiffs on the  
23 scope of that production. What led to, and I don't  
24 want to, you know, go through the full history of this  
25 case unless you want to hear it, you know, what led to



1  
2 our asking for the 60 day extension of our substantial  
3 completion deadline was the fact that we could not get  
4 plaintiffs to engage and agree on custodians and search  
5 terms, particularly search terms, until August.

6           So all of the documents that required, you  
7 know, collection, you know, filtering using search  
8 terms and then review and productions, that process  
9 could not have begun until August. And so that was  
10 largely produced, you know, in the fall. We did  
11 produce, you know, approximately 190,000 documents,  
12 about a million pages of document, and 92 percent of  
13 that, and you can do that by page count or document  
14 count, was produced on or before the October 24<sup>th</sup>  
15 deadline for substantial completion.

16           Since that time, there are, you know, various  
17 categories of documents that, you know, either we  
18 hadn't agreed to produce and Your Honor compelled  
19 production of I think in September, some of that has  
20 taken a bit longer to collect, there have been some  
21 technical challenges. So, you know, even after October  
22 there has been some kind of, some smaller productions  
23 being made. We produced I think 88 documents yesterday,  
24 I think in the next week we're going to probably  
25 produce another couple of hundred to kind of close out

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2 various RFPs. But the vast majority they had on or  
3 before October 24<sup>th</sup>. The, you know, Chinese bank  
4 account records that they're mentioned, they got in  
5 August as part of the government production, so they've  
6 know about that. They requested bank accounts,  
7 statements from Chinese banks so they're in Chinese.

8 THE COURT: All right, anything else, sir?

9 MR. GREENFIELD: Nothing else from me unless  
10 you have questions?

11 THE COURT: No, I've asked the questions that  
12 I have, thank you very much. Mr. Lindenbaum, may I hear  
13 from you next, please, sir?

14 MR. MATTHEW LINDENBAUM: Yes, good morning,  
15 Your Honor --

16 THE COURT: Good morning.

17 MR. LINDENBAUM: Thank you for the opportunity  
18 to speak to this. In addition to the points that Mr.  
19 Greenfield made I just want to address a few additional  
20 things that came up. First, we did, along with the  
21 other defendants, offer as compromise the two extra  
22 months and no new requests, but our position, you know,  
23 which remains our position today, is that no additional  
24 extension is required. So just to clarify that, that  
25 was our offer of compromise.

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THE COURT: All right, no, I'm going, I was obtuse before, I'll be obtuse again, sir. Are you still offering that in compromise or have you withdraw that because it's been rejected by Ms. Halligan and her team?

MR. LINDENBAUM: It was rejected so there's no, I think the offer has been rejected so there is no offer out there.

THE COURT: Thank you. And is it your position as you speak to me now, that there should be no extension at all, courtesy or otherwise? I just want clarity, please, sir?

MR. LINDENBAUM: Well like Mr. Greenfield, we believe in courtesy extensions but we don't think that one is needed here. We think there's enough additional time in discovery to work through any issues that the plaintiffs may have. But we also strongly believe that no additional discovery should be served at this point, in light of what, in light of the most recent requests that the FTX, Sam Bankman-Friend, far afield from the allegations in this action.

The other point I wanted to address is the statement that we are hiding the ball --

THE COURT: Yes.

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MR. LINDENBAUM: Or that there is custody and control issues, which his simply not the case --

THE COURT: Please, yes, that I would like with some detail, please, sir.

MR. LINDENBAUM: So back over a year ago, January of 2022, our interrogatory responses identified what types of communication platforms people used and that is all laid out, that is not, that was there from the beginning. In our initial meet and confers we explained that what we had from the time in which we owned the Poloniex Exchange was more limited because we had maintained emails and Slack Channel messages, we hadn't maintained the other sorts of communications. So we were upfront about that from the beginning.

And to actually take a step back, Your Honor, the other thing that we're upfront about which is really also of public record, is that my client, Poloniex LLC, only owned the Poloniex Exchange for a very short period of time, for a period of 18 months. We bought it from a predecessor and then, that was in February of 2018, actually really kind of, that's the core factual, you know, time period of this case, and then we sold it in November of 2019 to a successor. The plaintiffs have known about this from the beginning

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and we explained from the beginning that because of that we don't have everything that the predecessors have in terms of documents and we don't have everything that the successors had because we sold the business.

It was only last week, Your Honor, that the plaintiffs served document discovery on the predecessors and on the successor, but that's a fact that in addition to being public, is something that we, that we discussed with them, you know, a year ago. I don't know if it's a question of the handoff from one set of counsel to another where some just got lost, but we've been, we've been clear on these things throughout. We were clear on what people used, we're clear on what we have and why we have, you know, what we have.

THE COURT: Mr. Lindenbaum, Mr. Lindenbaum, please, just because Ms. Halligan has focused on this in her presentation to me, I do want to make sure I understand that. I appreciate what you're saying, that there have been ownership changes and that there is both a predecessor and a successor entity, but I want to, I want to be sure that I understand how you communicated to plaintiff's counsel the limits on the information that you had as distinguished from that

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2 that might be in the possession, custody or control of  
3 the predecessor or successor entities?

4 MR. LINDENBAUM: So we identified in our  
5 interrogatory responses who the, what platforms were  
6 used, and we in meet and confers early on explained  
7 here is what we maintained in terms of during the time  
8 period that we owned the platform, namely email and  
9 slack. And we were upfront about the fact, and I think  
10 that this was disclosed in our early interrogatories as  
11 well, who those entities were. But, again, it's a  
12 matter of public record as well.

13 So the delay in, I mean any follow-up could  
14 have been done at that time and we would have been  
15 happy to do it, but like I said, it was only last week  
16 that they served discovery on the predecessors and  
17 successors, that's not on us and it's no secret who  
18 they are.

19 THE COURT: Sir, at any time before January of  
20 2023, did you say specifically to plaintiff's counsel  
21 in any of your responses or in any meet and confer that  
22 something they were seeking was in the custody of the  
23 predecessor or the successor entity?

24 MR. LINDENBAUM: That something that they were  
25 seeking was in the custody of the -- well we said that

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2 we don't have everything that the predecessor has and  
3 we said that we don't, you know, and that we sold the  
4 exchange to the successor. I, myself, don't know what  
5 the predecessor has or what the successor has, those  
6 are other entities. I know, you know, we can say what  
7 we gave the successor but we're upfront about the fact  
8 that we don't have anything, we only owned this for 18  
9 months and we were only brought into this lawsuit after  
10 we had already sold the business to the successor.

11 THE COURT: Mr. Lindenbaum, let me be a little  
12 bit more precise with my questioning. I'm always  
13 amazed at discovery responses because of the sheer  
14 number of objections that precede the little morsel of  
15 information that is disclosed. And so it would not  
16 surprise me, for example, if you had said, look, we  
17 have what we have, we don't have what we don't have, as  
18 just a form objection, did you have anything along  
19 those lines where you made clear in your objections to  
20 requests for documents or interrogatories or whatnot,  
21 that there were limits on what was in your client's  
22 possession, custody or control?

23 MR. LINDENBAUM: Well we have been clear from  
24 the beginning, both in our responses to the initial  
25 requests for production and in meet and confers after

1  
2 that. There's been no hiding of this and it's, you  
3 know, we are different entities.

4 THE COURT: Well not really, I think everybody  
5 understands that there are different entities, I guess  
6 the point is I could see a situation where your clients  
7 retained certain materials even if only in duplicate.  
8 And so I guess I'm asking the clarity with which you  
9 advise plaintiff's counsel that things has been  
10 transferred and were just no longer with your client as  
11 a consequence of the sale, or conversely, that Your  
12 Honor client didn't receive everything in February of  
13 2018 when it took over.

14 MR. LINDENBAUM: As an example, one of the  
15 things that we had mentioned earlier, at least I  
16 believe both in the beginning and in subsequent meet  
17 and confers, is that for the predecessor owner, Your  
18 Honor, what we call the Poloniex founders, we only had  
19 the email of the Poloniex founders, we didn't have  
20 their other employees' emails. And they had asked  
21 specifically about one particular employee, do you have  
22 his emails, and we said no, all we have are the three  
23 Poloniex founders, that's what we have. And again --

24 THE COURT: Go ahead, finish your thought.  
25 Thank you.



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MR. LINDENBAUM: It was last week that for the first time they served request on the Poloniex founders personally, they could have done that back in the beginning, they could have done that when we had the conversation in September.

THE COURT: Mr. Lindenbaum, I want to be clear that I'm hoping that I'm not misperceiving the arguments that Ms. Halligan or any of you are making to me today, but what was the clarity that they obtained in January? I thought I understood Ms. Halligan to say that in making, in undertaking the review of the Slack chats that they realized that other platforms were used, you indicated that you advised them that there was, that you had email, that you had Slack, what else was there that was being used that either you knew about or had access to or didn't have access to?

MR. LINDENBAUM: So, again, over a year ago in our initial discovery responses to their interrogatories we explained, we listed the different messaging platforms that people did use. So we identified those from the beginning.

THE COURT: Yes, sir.

MR. LINDENBAUM: But we did not, we did not maintain all those, all those and we've said the two

1  
2 primary here are Slack and email, that's what we  
3 maintain. So to take, to take Skype, which is something  
4 that was referenced, it's another platform reference in  
5 the Slack messages --

6 THE COURT: Yes, of sainted memory, sir, yes,  
7 we used to use it, too, yes.

8 MR. LINDENBAUM: Right, right back in, back in  
9 the day people used that, but so there's reference to  
10 that in the slacks but those Skype messages were not  
11 maintained. In fact Skype is often used as it was, used  
12 as a videoconference, so there's reference to using  
13 Skype but, you know, those videos aren't recorded, we  
14 won't have them in our database. So that, so there  
15 shouldn't be any confusion here and we've been open  
16 from the beginning.

17 THE COURT: All right, is there anything else  
18 you wanted me to know, sir, I did not mean to derail  
19 you?

20 MR. LINDENBAUM: No, no, just that, not to  
21 repeat anything in the letter, but there's enough time  
22 in discovery for any kind of working through, you know,  
23 perceived deficiencies, and so we think that's  
24 important to note, and the fact that there really  
25 doesn't need to be any new discovery at this point, you

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know, on topics like FTX and Sam Bankman-Fried.

THE COURT: That's something that your colleagues are all echoing, I understand, I'm not agreeing or disagreeing at this point. All right, anything else, sir?

MR. LINDENBAUM: No, not unless you have any additional questions, Your Honor.

THE COURT: Thank you, no, I've asked the questions I have, Mr. Rudzin, I appreciate your patience, may I hear from you now, please.

MS. ABBY RUDZIN: Certainly, Abby Rudzin from O'Melveny & Myers for Bittrex. I'd like to start by addressing Ms. Halligan's contention that we made inaccurate representations, and I think you already got this nuance which is we told the plaintiffs these, these being Slack and email, are the platforms that are the corporate platforms that people at Bittrex use to communicate, and they were not authorized, there are no other official channels. And Ms. Halligan says, well, we've learned that maybe they used Skype or something called Telegram, which I never heard of before, the fact that they might have been used by employees and some occasions in their sort of personal use, does not make our representation inaccurate.

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2           We, at the beginning of the case we did what's  
3 appropriate, we interviewed relevant people at the, you  
4 know, left at the company to find out what kind of data  
5 they had. We collected it, we searched it. Now Ms.  
6 Halligan says, well, it turns out that one of your  
7 employees used Telegram and they discovered this  
8 because one of the other defendants produced a Telegram  
9 chat that referred to one of our employees. That  
10 Telegram chat was produced I believe about eight months  
11 ago, so Ms. Halligan's suggestion that this was new  
12 information is I think in itself inaccurate.

13           As for them, my understanding is that Telegram  
14 is kind of like a Facebook group where people with a  
15 similar interest can chat to each other. It's not the  
16 employees, or CEO or whatever his position was at the  
17 time conducting business, he's, you know, doing  
18 whatever people do on their computers and chatting with  
19 people, and that's his personal account. So when the  
20 plaintiffs raised this issue about his Telegram, we, as  
21 a courtesy, I don't think we had any obligation to do  
22 this because that platform is not in our possession,  
23 custody or control, we went to him and asked him to  
24 please log in under his own name, his personal, you  
25 know, password, and pull the data so that we could

1  
2 search it. and we have done that and we've hit, hit on  
3 the search terms 21 documents. so we'll probably be  
4 producing five of them maybe next week.

5           So we, at the end we conducted a good faith  
6 search, they've raised some issues, we've gone back to  
7 try to, you know, chase down every alleyway to see if  
8 there is anything else. The company doesn't have a  
9 Skype database, it doesn't have a signal database, it  
10 doesn't have a Telegram database, like these platforms  
11 are third party, I mean to me they're social media, I  
12 just don't know how Bittrex is required to search its  
13 employees or former employees' social media platforms.

14           One other point I want to address is Ms.  
15 Halligan's contention that they're just following up on  
16 deficiencies that came to light recently. I have in my  
17 hand here a letter the plaintiff sent to us Monday  
18 night, February 6<sup>th</sup>, complaining about Bittrex'  
19 production in response to RFP 42 which was served in  
20 2021 and we did our responses and objections on January  
21 28<sup>th</sup> of 2022. And we told them in those responses and  
22 objections that their request was overbroad and not  
23 really feasible and we told them exactly what we would  
24 produce in response to that request. They didn't  
25 object, they didn't raise it in a meet and confer. That

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was over a year ago.

We made that production on April 1<sup>st</sup>, so 10 months ago we made the production of exactly what we told them in January we were going to produce, and two days ago they sent us a letter saying your production in response to RFP 42 is deficient because you didn't give us everything we asked for and you only gave us what you said you would give us. I don't think that reflects diligence in terms of, you know, following up on issues or questions or anything like that, and I appreciate your point that Ms. Halligan can say now they're going to move forward and get really aggressive. But I don't want to give them eight months to do that, and that's what they're asking for now. You know, we're now the recipient of the letters accusing us of having deficient productions and demanding responses within two days on something we produced 10 months ago.

So as with Poloniex, our position is there shouldn't be any extension. They've got almost four months left already right now and it was a compromise offer that is obviously no longer on the table of the two months.

THE COURT: All right. Ms. Halligan, brief

1  
2 reply.

3 MS. HALLIGAN: Thank you, Your Honor. First of  
4 all, as a general matter, as Your Honor said, the  
5 letter that we reference and I believe it's sealed so I  
6 won't go into it, is from 2018. What defendants call  
7 new requests, I think we would call following up on new  
8 evidence of manipulation and of conversations about the  
9 prices in this space. We invited the defendants to  
10 represent to us if they were involved in this chat and  
11 when it began and they declined to do so. So we have  
12 not yet teed that up for Your Honor, but that is why we  
13 are looking. It is crucial and goes to the core of our  
14 theory.

15 With respect very briefly to each of the three  
16 defendants, you know, we received two productions from  
17 the BT defendants last night at 10 p.m., I don't know  
18 what's in them yet. But that is part of why we are  
19 here today, we still do not have a clear answer from  
20 them on all of the accounts comprehensively that they  
21 claim back up USDT. And I would also add that they  
22 told us at the time that they needed an extension due  
23 to difficulties in collection, not for some reason  
24 related to our negotiations. And if the negotiations  
25 have taken a while, that is in part because they have

1 taken very hard lines including widespread objections.

2           With respect to Poloniex, Your Honor, your  
3 know, the question of legal control is whether they can  
4 require former employees to provide these chats. We are  
5 exploring with them their assertion that they lack  
6 custody and control. Again, we have not teed that up  
7 for the Court, we are trying to come to ground with  
8 them on this and also reaching out, as you just heard,  
9 to the founders and other entities. But we're trying to  
10 test the proposition of something they notified us  
11 about a couple of weeks ago.

12           With respect finally to Bittrex, again, you  
13 know, a company is required to search any records that  
14 its employees use for business. And they can't simply  
15 refuse to use, to search a platform that not just any  
16 employee but its CEO used simply because they think  
17 it's social media.

18           And with respect to the timing, we did not  
19 assume that the production was complete when we only  
20 had 300 documents. As Ms. Rudzin says, we are still  
21 negotiating with them, we hope that we will come to  
22 closure on this question with regard to the scope of  
23 the search, if we do not we will certainly tee it up  
24 for Your Honor expeditiously.  
25



Again, Your Honor, you know, we have I believe worked very diligently, we think these issues are critical to exploring the claims on behalf of the class. Any suggestion that this is due to the departure of Roche Freedman I think is misplaced. They were out before the extended deadline even hit. And we really would ask Your Honor to give us the four months that we need to come to ground on these issues.

THE COURT: All right, thank you all very much. I'm going to just turn off my mic in camera for a few moments. I've been taking notes, as you see, I want to get my thoughts together, I'll be right back, thank you.

MS. HALLIGAN: Thank you, Your Honor.

(PAUSE IN PROCEEDING)

THE COURT: Counsel, thank you very much for your patience, I'm going to ask you, please, to return to the platform. Thank you.

All right, my hope is that I have everyone back. My deputy had to step out for something so of course we are lost without her but I thank you. And so let me speak to these issues, and took more time than I thought I needed, I appreciate your patience in that regard, but it was because I was concerned about both

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the, some of the arguments that were being made to me and the responses to them, and about my own responses to those arguments.

One of the things that troubled me about this request was that I felt that there was a lot of loose language, and that's been borne out as well by the arguments to me today that things were critical or that things were the core of the case, or that someone was hiding the ball, and I don't actually find that those statements were necessarily borne out by the record.

So part of the reason I took the time that I did was because I wanted to be sure that what I'm saying to you now could not be or would not embody the same overstatements that bothered me so much during the arguments today. I have, I have views, we all have views, I have a lot of views as to this case and as to the conduct of counsel in this case, I don't need to share the details of them with you today. Suffice it to say that I am dissatisfied with plaintiff's progress, I am dissatisfied with their explanations, I am dissatisfied with their diligence in, at least with respect to discovery in this case. I went back and I looked at the original timetable, there was a protracted schedule, I chose the longer schedule. I've

1  
2 looked at the timeframe on the disputes that I've  
3 resolved, I do not see a need for an extension.

4 I agree in large measure, I won't say  
5 entirely, with the defense's arguments regarding their  
6 productions. I agree in large measure with the  
7 explanations given, for example, today by the Exchange  
8 defendants about platforms and custody and control.  
9 Conversely, I do not agree, though I do appreciate the  
10 effort, to argue that new areas of discovery are  
11 somehow organic follow-ups to earlier requests. And I  
12 understand that there are discovery disputes that I  
13 will be seeing soon, I think I heard three of them  
14 identified by plaintiff's counsel. I'll address them  
15 when I address them, I don't foresee them as a threat,  
16 I just understand that they are coming, but I have to  
17 say a comment by Ms. Rudzin resonated with me that it's  
18 tough when you've made a production months and months  
19 ago to be asked to run around, rearrange your schedule  
20 and respond in days because someone was inattentive to  
21 it.

22 So to be clear, and I think my statements to  
23 you this afternoon are clear, I don't want to grant a  
24 discovery extension. I don't want to grant a discovery  
25 extension and I particularly don't want to grant a

discovery extension to pursue new lines of inquiry that are attenuated from the original complaint. But the fact remains that the parties, at least at one point, thought it was appropriate to offer or to discuss a two-month extension. And I have spent a significant portion of the last period of time trying to find a way or a reason for me to completely disregard the courtesy that defense counsel was willing to exchange to plaintiff. And the fact remains that had the parties agreed on this extension and presented it to me, I would have been annoyed, as I am with this request, but I probably would have granted it. And given that, I don't, I think it would only be pettiness for me to deny it now.

At some point a bunch of you thought two months was okay, and I don't think it is appropriate for me to disagree with that, inasmuch as you are all closer to the case, but I'll say again, I don't think any extension is warranted, I would have granted none. So where we are is that I will grant the two months on the condition offered by the defense, that there be no new discovery requests during that period. This extension, the completion of this discovery, is for plaintiff to do and to complete what they should,

1  
2 plaintiffs, to complete what they should have completed  
3 all along and not to engage in new frolics and detours  
4 into new areas and not to come to me in two months and  
5 ask for additional time.

6           So I guess I'll ask the parties to meet and  
7 confer and provide for me a revised amended case  
8 management plan to address the two months. Be  
9 forewarned that I will take very seriously what is new  
10 discovery and what is an appropriate follow-up  
11 question. And I think it is -- well, I mean I think  
12 it's unfortunate that we are where we are right now. I  
13 cannot communicate enough my disappointment with that.  
14 So I believe that resolves the extension request.

15           I'm telling myself, and I hope that plaintiffs  
16 didn't seek a four-month assuming I'd split the baby  
17 and give two months. Again, I don't, I, were I not  
18 presented the context of the courtesies, and they were  
19 courtesies extended by the defense, I'd give nothing  
20 and I'd be very comfortable with it.

21           So that's where we are on that issue and that  
22 leaves us the issue of the anonymous trader. So I think  
23 I have Ms. King on that point --

24           MR. GREENFIELD: Your Honor?

25           THE COURT: Oh, yes, there's someone speaking,

1  
2 yes, Mr. Greenfield, yes, sir?

3 MR. GREENFIELD: Yes, just one quick question  
4 on that ruling. I'm curious how it impacts the  
5 numerous third party subpoenas that plaintiffs have  
6 sent out just in the last couple of weeks while this  
7 discussion about an extension was going on, including  
8 two, Sam Bankman-Fried and Alameda Research, is that  
9 considered --

10 THE COURT: Look, the -- I think the Alameda  
11 and the Bankman-Fried stuff is at the frontier of what  
12 I would consider relevant to this case. It's out there  
13 and I'm not going to retract it, but nothing, nothing  
14 more like that. I think plaintiffs are done with their  
15 sending out requests, I think they're really limited at  
16 this point to following up on deficiencies and asking  
17 for try clarifications of things.

18 Mr. Greenfield, does that answer your  
19 question?

20 MR. GREENFIELD: Yes, understood, thank you  
21 very much.

22 THE COURT: All right, thank you, very much.  
23 Yes, Ms. Halligan?

24 MS. HALLIGAN: Understood, Your Honor, I'm  
25 going to let Ms. King take the podium to address the

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anonymous trader issue if I may?

THE COURT: Thank you very much, yes. Ms. King, you're welcome.

MS. HALLIGAN: Thank you, Your Honor.

MS. LAURA KING: Good morning, Your Honor.

THE COURT: When you're ready, Ms. King, thank you.

MS. KING: Good morning, Your Honor, Laura King for Selendy on behalf of plaintiffs. I first want to start off by saying we understand the Court's ruling as to the anonymous trader securities concerns and information. Our position is simple, what we are seeking is parity here. As we understand it now, the anonymous trader's position is that all parties seeking to share the trader's personally identifying information with non-attorneys or experts should be subject to the Court's previous orders.

Defendants have repeatedly taken the position in response to our requests and to this Court that they take the same position as the anonymous trader. And defendants have taken the position that it is not their place to waive the protections the Court has afforded tot eh trader. So there is no reason that the Court's restriction on sharing the trader's personally

1  
2 identifying information with non-attorneys and experts  
3 would not apply equally to defendants.

4 THE COURT: Ms. King, just so that I'm clear,  
5 what I'm understanding you to say is that the prior  
6 decision that I had that any transmission of materials  
7 to staff or to expert witnesses would be in redacted  
8 form, you're saying that that applies, it does apply to  
9 you all and it applies equally, it should apply equally  
10 to the defendants, do I understand that correctly?

11 MS. KING: Yes, Your Honor, that is correct.

12 THE COURT: Okay, please continue, thank you.

13 MS. KING: To date that is not the position  
14 defendants have communicated to us, the position they  
15 have articulated is that the restrictions only apply to  
16 plaintiff's counsel because they can do whatever they  
17 want with their own documents. This Court's order at  
18 docket 215, Your Honor, which you just mentioned,  
19 adopted the anonymous trader's proposal which provided  
20 that his material could be used by redacting his  
21 personally identifying information in order to share  
22 them with non-attorneys and experts. That restriction  
23 applies equally to defendants.

24 And I think a contrary position is  
25 inconsistent with his position the trader's security



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2 concerns and this Court's rationale for imposing these  
3 protections. At the highest level, the anonymous  
4 trader's position has been that wider dissemination of  
5 his personally identifying information poses a greater  
6 risk to his security. This Court has endorsed that  
7 rationale in maintaining the protections and so we  
8 would ask that for all non-attorneys defendants be  
9 required to similarly submit a list of non-attorneys  
10 with access to the trader's personally identifying  
11 information to the trader and to the Court articulating  
12 the need for access as plaintiffs have done, and with  
13 respect to experts we ask the defendants likewise be  
14 required to redact any documents containing the  
15 trader's personally identifying information consistent  
16 with this Court's order at docket 215.

17 Finally, going forward, Your Honor, given the  
18 --

19 THE COURT: I'm sorry, can I just ask you to  
20 pause for a second, I'm sorry, I'm trying to take the  
21 note.

22 MS. KING: Absolutely.

23 THE COURT: The docket entry again, please,  
24 was 215?

25 MS. KING: 215, Your Honor.

1 50

2 THE COURT: Thank you, and just one more  
3 moment, please, as I take the note down.

4 MS. KING: Absolutely.

5 THE COURT: Thank you, please continue.

6 MS. KING: And, finally, going forward, Your  
7 Honor, given that plaintiffs alone have shouldered the  
8 burden of redacting the trader's personally identifying  
9 information for nearly a year at the expense of moving  
10 more efficiently, it is our position that defendants  
11 should be required to produce to plaintiffs a clean  
12 copy and a redacted copy of all documents containing  
13 the trader's personally identifying information in  
14 future productions.

15 And I'm happy to answer --

16 THE COURT: I'm not sure I was ready for that  
17 request, let me hear that again, please.

18 MS. KING: Sure.

19 THE COURT: You've already done the redacting  
20 or you're in the process of doing it with respect to  
21 your expert witnesses, correct?

22 MS. KING: Correct, Your Honor, we're saying  
23 for future -- for future productions, not anything  
24 that's been produced to date.

25 THE COURT: I see, are there additional

1  
2 anonymous trader records that you believe are out there  
3 and would be produced in future productions?

4 MS. KING: I do, Your Honor, I think it's  
5 going to depend on the custody and control issue that  
6 Ms. Halligan raised. But to give Your Honor an example,  
7 you know, one Poloniex employee indicated that he  
8 exchanged 1,500 messages with the anonymous trader in  
9 an 11 month period, and we have no, none of those  
10 underlying communications. So it seems possible at  
11 least that we will be getting more anonymous trader  
12 information.

13 THE COURT: Okay, thank you. Mr. Greenfield,  
14 I don't know if you want to be heard on this issue?

15 MR. GREENFIELD: Sure, thank you. So I think  
16 as a threshold issue to the extent in question, we do  
17 not believe that the protective order or any of the  
18 Court's subsequent orders that are specific to the  
19 anonymous trader apply to defendants' handling of their  
20 own documents. The protective order, the original  
21 protective order which is docket 151, states that,  
22 quote, "This protective order does not in any way  
23 restrict the use or discovery by a party or other  
24 person of its own discovery material," that's standard  
25 language in every protective order that I've seen. The

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2 Court's subsequent order specific to the anonymous  
3 trader from November of 2021 and April of 2022, both  
4 refer to materials that are received through discovery  
5 and not to, you know, parties' own documents.

6 THE COURT: But, Mr. Greenfield, let me say  
7 this. I think you're accurately quoting the documents  
8 in this case, but the issue the trader has expressed  
9 concerns to me about his security. How is it that I  
10 can impose on plaintiffs these very severe restrictions  
11 when it comes to transmission to staff or to expert  
12 witnesses, but that you all don't have similar  
13 restrictions, that would seem to undermine everything  
14 the anonymous trader is seeking.

15 MR. GREENFIELD: Well the defendants, you  
16 know, already know the identity of the anonymous  
17 trader, so, you know, our clients all know that  
18 identity and his PII. We are, you know, very careful  
19 about his information in the same way we're extremely  
20 careful about the information of all of our customers.

21 THE COURT: Sir, I'm thinking -- excuse me,  
22 sir, I'm thinking particularly about expert witnesses,  
23 why shouldn't those materials be redacted when given to  
24 expert witnesses?

25 MR. GREENFIELD: I don't have a problem with

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2 that, I think that in the past in full disclosure, you  
3 know, quite a while ago and, you know, I was not  
4 directly involved in it but I believe that anonymous  
5 trader materials were shared with an expert because  
6 those were, again, our own documents and we didn't  
7 understand any of the Court's orders to be preventing  
8 that. On a going forward basis we don't see any need  
9 for our experts to see unredacted copies. I don't think  
10 it's, you know, quite as burdensome as plaintiffs  
11 suggest because, you know, maybe I'm being proven wrong  
12 but I don't see why an expert needs to see all kinds of  
13 text messages involving the anonymous trader, I think  
14 an expert is largely going to be, you know, evaluating  
15 transaction records. So on a going forward basis we're  
16 willing to redact that information before we provide  
17 documents to experts to the extent they have not  
18 already received unredacted documents, you know, unless  
19 we see, you know, down the road see a need for  
20 unredacted documents and we would come back and address  
21 it at that point.

22 THE COURT: Sir, do you want to speak to Ms.  
23 King's last point which is about future productions, do  
24 you contemplate there being any productions from your  
25 clients that would involve the anonymous trader and if

1  
2 there are, are you willing to provide them in redacted  
3 and clean form?

4 MR. GREENFIELD: I don't anticipate that there  
5 are going to be more, I can't say for certain they're  
6 not. The one thing, the reason I'm pausing is that, you  
7 know, we're going through our privilege review and  
8 inevitably when you do a privilege review some  
9 documents fall out of that and you decide, all right,  
10 that was originally tagged as privilege but we don't  
11 think it is and can be produced. So there may be some  
12 small number that come through that way. You know, I  
13 guess I don't feel strongly either way.

14 I don't, the whole, you know, asymmetry of the  
15 burden is, you know, sometimes hard to take on the  
16 defense side, you know, given that, you know, we, as I  
17 said earlier, reviewed and produced, well we produced  
18 190,000 documents, a million pages, we reviewed  
19 multiple of that. Plaintiffs have produced to us I  
20 think 10,000 documents. So there's asymmetry is a  
21 burden everywhere in litigation, it usually falls more  
22 on the defense side, but happy to comply with however  
23 Your Honor would like to proceed.

24 THE COURT: Well that's because you also think  
25 there are very few documents that it would apply to but

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2 I do appreciate the willingness sir, all right, thank  
3 you. May I hear from Mr. Lindenbaum now?

4 MR. LINDENBAUM: Sure, Your Honor, I don't  
5 have anything different to add to say on this topic  
6 other than what Mr. Greenfield just said. I would  
7 anticipate to the extent there are any additional  
8 productions, they're more likely to come from third  
9 parties actually and not parties to this case.

10 THE COURT: All right, and Ms. Rudzin.

11 MS. RUDZIN: I'll be very brief, we agree with  
12 what Mr. Greenfield said, we have no problem not  
13 revealing the identity to an expert, we haven't done so  
14 yet and we are fine not doing it in the future. But I  
15 also think, and I don't think we're really going to be  
16 producing any more documents with his identifying  
17 information, but I think the plaintiff's claim that  
18 it's too burdensome for them when, as Mr. Greenfield  
19 points out, we have to review five, ten documents for  
20 every one we produce, I think they can handle the  
21 burden of a few extra redactions.

22 THE COURT: Okay, thank you. All right, Ms.  
23 King, your reply, please.

24 MS. KING: Yes, Your Honor, I won't, I won't  
25 repeat the burden of the redaction process but I will

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say to this Court that I have personally spent many, many, many hours dealing with the ancillary issues that arose out of it. That element of it is not a lack of diligence and it was always an effort to comply with this Court's order.

          You know, I think defendants are saying there's no reason, really, they shouldn't be subject to the same restrictions, to the extent, you know, they've provided things to experts, perhaps they want to claw back things revealing the anonymous traders identity, but certainly going forward we would ask that they redact anything with this personally identifying information and are under the same protocol that plaintiffs are under.

          THE COURT: Ms. King, let me just make sure I understand what you're saying. I do think there is agreement or at least they'll allow me to order that with respect to their communications with their expert witnesses, the personal identifying information of the anonymous trader would be redacted from any materials given to the expert witnesses. For the one person who may have gotten something earlier, I'm not going to bother with the claw back, I'm not really worried about that now. The security issues were only brought to my



1  
2 attention when they were brought to my attention.

3           What they're saying, however, is that's really  
4 focusing on the expert witnesses. To the extent that  
5 there are client representatives who know who this  
6 person is, it seems a little bit foolish to do the  
7 redactions. So will you accept as a compromise the  
8 offer to redact any materials going to expert witnesses  
9 or similar third parties?

10           MS. KING: Yes, Your Honor.

11           THE COURT: Yes, good, okay.

12           MS. KING: And I want to be clear, I wasn't  
13 suggesting that this Court's order, you know, changed  
14 what their client representatives could do with their  
15 documents, but rather that non-attorneys and experts,  
16 the lawyers in this action are doing would be subject.

17           THE COURT: And, Ms. King, I appreciate that,  
18 let me just, I'm just trying to understand, in terms of  
19 the non-lawyers, what are you thinking about? Are you  
20 thinking about staff at each of the law firms, are you  
21 thinking about some document vendor, I just want to  
22 make sure I understand it?

23           MS. KING: No, I'm thinking about staff at the  
24 law firm, Your Honor. I think it probably depends how  
25 they maintain their documents, right, but for

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2 plaintiffs the issue with the anonymous trader, having  
3 the anonymous trader's material on the (indiscernible)  
4 review was the following. Our litigation support  
5 specialists have access to our document hosting  
6 platform. So if we put the documents unredacted on that  
7 document hosting platform, by virtue of doing that non-  
8 attorneys would have had access to, potentially had  
9 access to the information. So we were redacting before  
10 we were putting it on that platform.

11           And so, and so, you know, we have come up with  
12 a list of the minimum amount of people that need, that  
13 from our firm that are not attorneys need access, and  
14 we think defendants should do the same. And we think  
15 that's consistent with the trader's security concerns  
16 and the rationale this Court has articulated in  
17 limiting the dissemination of his information.

18           THE COURT: All right, now, see, Mr.  
19 Greenfield, this is the issue, I knew it was too easy.  
20 On the issue of expert witnesses I think we're in  
21 agreement, on the issue of documents going forward,  
22 recognizing the arguments regarding information  
23 asymmetry, because I'm telling myself that there will  
24 be so few of these documents being produced I will ask  
25 you to produce them in clean copy and other, and

1  
2 redacted form. And you can come back to me if it turns  
3 out that there are a million documents and I'll see if  
4 I need to revisit the issue. If there are we have I  
5 think bigger problems.

6 But what do I do with your paralegals, sir,  
7 what do I do with litigation support specialists, I  
8 imagine these documents are already in your system, is  
9 that correct?

10 MR. GREENFIELD: Yeah, I mean I think that  
11 ship has sailed, we've been using non-attorneys at our  
12 firm and document vendors to host and review these  
13 documents. You know, I don't think that we can undo  
14 that or that there's a reason to either. These are,  
15 again, our client's documents and if they want to share  
16 them with their lawyers as part of a lawsuit and their  
17 law firm, that seems reasonable to me.

18 THE COURT: Well let me ask this, Mr.  
19 Greenfield, would it be possible for you to identify  
20 the folks in your respective defense firms who are  
21 looking at the materials, because I thought I  
22 understood that there were individuals as to whom the  
23 anonymous trader has given an all clear to access the  
24 information without redaction, am I misunderstanding  
25 that?

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MR. GREENFIELD: I'm not sure I'm following, I know that --

THE COURT: Okay, let me try that, I'll try that again and I'll try and be more thoughtful, excuse me. I thought I understood that the anonymous trader accepted or gave an all clear to eight members of plaintiff's firm's staff who could look at these, look at the information without redactions. Ms. King, am I correct or have I misunderstood that?

MS. KING: No, you are correct, Your Honor, that's correct.

THE COURT: Okay. So, Mr. Greenfield, is it possible that we could get perhaps retroactive approval nunc pro tunc approval for the folks on your teams who are looking at this, and if the anonymous trader were to say it's fine that they're looking at it then we wouldn't have to worry about it. And if he said it's not fine, then there might be something else for us to do.

MR. GREENFIELD: I'm happy to look into that, I really can't say --

THE COURT: Of course. Of course, no, I understand --

MR. GREENFIELD: Because I don't know in this

1  
2 much detail as perhaps I should about, you know, the  
3 process for who has had access or handled them within  
4 the firm.

5 THE COURT: Of course, sir, please understand,  
6 I'm not interested in giving you all a lot of extra  
7 homework. I'm trying to address which, what for me may  
8 have been late breaking concerns about security. If  
9 ultimately you believe it can't be done, what I'm asking  
10 for is ridiculous, then write me a letter and tell me  
11 that and I will, I will think about it. If you think  
12 that you can gather together a list of people and the  
13 other firms, Mr. Lindenbaum's firm and Ms. Rudzin's  
14 firm could get together the people who are involved and  
15 we could show that to the anonymous trader and the  
16 anonymous trader could say, yay or nay, that's a  
17 possibility. It just may be impracticable. I mean I'm  
18 sort of giving it to you on the fly.

19 MR. GREENFIELD: As you're talking I'm  
20 thinking about it, I think it's impracticable, I think  
21 we've used multiple document hosting vendors, we've  
22 used outside vendors to do kind of some of the first  
23 level review of documents. It's not a matter of, you  
24 know, a handful of people at Debevoise which we could  
25 do, but I don't think, I mean I don't think it's

1  
2 possible at this point to go back and identify anyone  
3 who's had access over the past year.

4 THE COURT: And I accept that for the reasons  
5 that you've just said but let me ask you, what about  
6 going forward?

7 MR. GREENFIELD: Yeah, I think we can give it  
8 a shot and I will write a letter if on further  
9 consideration and discussion with my team they tell me  
10 that that's a crazy thing I never should have said yes  
11 to.

12 MS. RUDZIN: Your Honor, may I be heard?

13 THE COURT: Ms. Rudzin, yes, please.

14 MS. RUDZIN: Just a quick possible better  
15 suggestion is what if we got blanket approval from the  
16 anonymous trader that employees of our firms could see  
17 them rather than trying to name people? Because I'm  
18 sure you know that at a big firm people leave, new  
19 people come in, any list would be --

20 THE COURT: You don't say, yes. Listen, if  
21 you can do it, I -- yes, that's fine.

22 MS. RUDZIN: Okay.

23 THE COURT: I'll accept a blanket approval,  
24 too, but not on the expert witnesses.

25 MS. RUDZIN: No, agreed, I just think the

1  
2 trader has never expressed a concern about O'Melveny  
3 knowing his identity and I think it's partly because  
4 we're not suing him or accusing him of wrongdoing so he  
5 probably feels a little more comfortable with us. But  
6 that might be better than specific identities.

7 THE COURT: All right, I will leave to you,  
8 Mr. Lindenbaum and Mr. Greenfield, how best to approach  
9 counsel -- the anonymous trader doesn't have counsel,  
10 does he, is he doing all of this, Ms. Rudzin, if you  
11 know?

12 MS. RUDZIN: I believe he has consulted with  
13 someone but he doesn't officially have counsel in the  
14 matter.

15 THE COURT: All right, let's ask the question  
16 differently, has your firm communicated directly with  
17 him?

18 MS. RUDZIN: Yes, remember, we obtained that  
19 declaration a couple of years ago.

20 THE COURT: Okay, fair enough. I guess, well I  
21 guess my question is would you be reaching out, he has  
22 what I would call shadow counsel basically, was your  
23 contemplation to reach out to shadow counsel or reach  
24 out to him directly?

25 MS. RUDZIN: To shadow counsel.

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THE COURT: I'll let you do that, thank you.

MS. RUDZIN: Okay.

THE COURT: Okay. All right, Ms. King, I thank you, I believe that resolves the issues you've raised to my attention, is that correct?

MS. KING: I think that's right, Your Honor, I think this exchange illustrates how the protocols have limited plaintiffs and not quite the same has been true for defendants, and so we are just seeking parity consistent with the anonymous trader's concerns and I thank the Court for its time.

THE COURT: I thank you all very much. I've kept you for now two hours, I appreciate your willingness to forego lunch for these conferences. I will be looking for a revised case management plan that I will sign while holding my nose but it will be done. I thank you very much, I ask you to please get along better with each other and to communicate a little bit better with each other, and I wish you continued safety and good health in this pandemic. We are adjourned. Thank you.

(Whereupon the matter is adjourned.)



C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, In re: Tether and Bitfinex Crypto Asset Litigation, Docket #19cv9236, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: February 13, 2023